

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Frederick L. Bixler et al. Confirmation No. 5482
Serial No.: 10/752,074 Examiner: Hylton, Robin Annette
Filed: January 5, 2004 Art Unit: 3727
For: Tamper Indicating Closure With Foldable Tab

RESPONSE TO OCTOBER 23, 2006 OFFICE ACTION

Mail Stop AF
Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Barnes & Thornburg Customer No: 23643 U.S. Patent and Trademark Office

Sir:

This is in response to the October 23, 2006 final office action.

Claims 1-21 and 23-26 stand rejected under 35 U.S.C. 103 as obvious over Krueger (U.S. Patent No. 6,371,317) in view of Couput (U.S. Patent No. 4,546,892).

The present application claims benefit of the filing date of the '317 Krueger patent as stated at page one of the present specification. The priority benefit is acknowledged in the official filing receipt and the priority data in the PAIR online system.

It is noted that David Krueger was not named as an inventor in the application papers. This matter was reviewed and it has been concluded that David Krueger is a joint inventor of the claimed subject matter. This response is accompanied by papers filed in accordance with 37 CFR 1.48 to add David Krueger as an inventor.

Accordingly, assuming acceptance of the addition of David Krueger in accordance with Rule 48, the '317 Krueger patent is not prior art to the present application. Reconsideration and withdrawal of the rejection on this basis is requested.

At page 3 of the office action it states that “the non-statutory double patenting rejection has not been repeated herein since there are no common inventors nor a common assignee.” The ‘317 Krueger patent and the present application are commonly owned as demonstrated by the assignment documents recorded at Reel 017853, Frame 0072. This response includes a terminal disclaimer by the assignee.

In view of the above, withdrawal of the present rejection and allowance of the application is, respectfully, requested.

If there is any issue remaining to be resolved, the examiner is invited to telephone the undersigned so that resolution can be promptly effected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (5723-200255).

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in cursive script, appearing to read "Richard B. Lazarus".

Richard B. Lazarus

Reg. No. 48,215

Tel. No. (202) 371-6348